

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 21, 2009

**STATE OF TENNESSEE v. THOMAS CHRIS MCDONALD**

**Appeal from the Circuit Court for Dickson County**  
**No. CR5990B     George Sexton, Judge**

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**No. M2009-00900-CCA-R3-CD - Filed February 11, 2010**

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The Defendant, Thomas Chris McDonald, pleaded guilty to possession of less than .5 grams of cocaine with intent to sell and received a probated, eight-year sentence as a Range I, standard offender. Ultimately, the Defendant was placed in the Community Corrections Program. Following a subsequent revocation hearing, the trial court ordered that the remainder of the Defendant's sentence be served in confinement. On appeal, the Defendant argues that the trial court abused its discretion in ordering revocation of his community corrections sentence. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

William B. Lockert, III, District Public Defender and Dawn Kavanagh, Assistant District Public Defender, Ashland City, Tennessee, for the appellant, Thomas Chris McDonald.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; and Dan Alsobrooks, District Attorney General, for the appellee, State of Tennessee.

## **OPINION**

### **Factual Background**

On March 6, 2003, pursuant to his plea of guilty, the Defendant was convicted of possession of less than .5 grams of cocaine with intent to sell, a Class C felony. See Tenn. Code Ann. § 39-17-417. A conspiracy charge was dismissed. In accordance with his plea agreement, the Defendant was sentenced as a Range I, standard offender to eight years in the Department of Correction, but he was allowed to serve his sentence on probation.

Thereafter, a probation violation warrant was issued, wherein it was alleged that the Defendant tested positive for marijuana on September 22 and October 7, 2004. The Defendant waived a hearing and admitted to the violation. In an order dated July 25, 2007, the Defendant's probation was extended for two years.

A second probation violation warrant was issued, which alleged that the Defendant again violated the terms of his probated sentence by being arrested for introducing contraband into a penal institution, failing to report, and failing to perform the required community service. Thereafter, a third warrant was issued, which alleged that the Defendant failed to report and was arrested for failing to appear. In an order entered May 28, 2008, the Defendant was again found to be in violation of his probated sentence after admitting to the violations. As a result of these violations, his supervision was transferred to the Community Corrections Program, and he was ordered to wear an ankle bracelet for ninety days.

Thereafter, a community corrections violation warrant was issued on June 24, 2008, wherein it was alleged that the Defendant failed to report "for intake" after his release from jail as directed. After the Defendant admitted to the violation, the trial court entered an order on September 24, 2008, requiring him to serve sixty days in the county jail, after which he was returned to the Community Corrections Program.

A second violation of community corrections warrant was issued for the Defendant on January 12, 2009. It was alleged therein that the Defendant violated the conditions of his sentence by being arrested in Sumner County on December 22, 2008, for driving on a revoked license, failing to abide by the rules of electronic motoring, failing to pay electronic monitoring fees, failing to move from public housing, and failing to pay court costs and fines. The warrant was later amended to include that the Defendant tested positive for opiates on January 9, 2009.

Following an evidentiary hearing on this warrant, the trial court found that the Defendant violated the conditions of his community corrections sentence. The trial court

revoked the community corrections sentence and ordered that the Defendant serve the balance of his sentence in confinement. It is from this order that the Defendant appeals.

### **Analysis**

On appeal, the Defendant argues that there was insufficient evidence to support the trial court's finding that he violated the conditions of his community corrections sentence. Alternatively, he contends that the trial court abused its discretion by revoking his entire community corrections sentence, requesting, instead, a period of "shock incarceration" and then release back into the Community Corrections Program.

The trial court has the discretion to revoke a community corrections sentence upon a finding that the defendant has violated the conditions of the agreement. See Tenn. Code Ann. § 40-36-106(e)(4); State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). The court may then resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum provided for the offense committed, less any time actually served in any community-based alternative to incarceration. See Tenn. Code Ann. § 40-36-106(e)(4); State v. Samuels, 44 S.W.3d 489, 493 (Tenn. 2001).

The proof of a community corrections violation need not be established beyond a reasonable doubt; it is sufficient if it allows the trial court to make a conscientious and intelligent judgment. See Harkins, 811 S.W.2d at 82-83. When revoking a community corrections sentence, the trial court must place its findings of fact and the reasons for the revocation on the record. See Gagnon v. Scarpelli, 411 U.S. 778, 786 (1973).

The Tennessee Supreme Court has held that an abuse of discretion standard of appellate review should be used to address the revocation of a community corrections sentence. See Harkins, 811 S.W.2d at 82-83. Before a reviewing court is warranted in finding an abuse of discretion in a community corrections revocation, it must be established that the record contains no substantial evidence to support the conclusion of the trial court that the defendant violated the terms of the community corrections program. See id.

We have little difficulty in concluding that the trial court committed no abuse of discretion in finding that the Defendant violated the terms of his community corrections sentence. The Defendant was aware of the requirements of his community corrections sentence, and he failed to abide by the terms of his sentence.

At the hearing, the Defendant's current community corrections case officer did not know the disposition of the Defendant's driving on a revoked license arrest. Regardless of this fact, the proof supported revocation. The Defendant testified that he was on "house arrest" and left his Dickson County home without permission in order to care for his ailing

mother. While his mother lived only two blocks away from him, the proof showed that the Defendant left his house over thirty times without permission. Being electronically monitored, he was tracked several times to the Tennessee State University area of Nashville, and also to Gallatin and Goodletsville on other occasions; at other times, he was not capable of being found. The Defendant admitted that he did not move out of public housing as instructed or pay his required fees, but he claimed that his former community corrections case officer acquiesced to these deficiencies due to his lack of funds; however, no notation reflecting such approval appeared in the Defendant's file. The Defendant also admitted to taking opiates, but he explained that the medication was prescribed for a chemical burn. He offered no proof of such a prescription or injury to bolster this claim, and there was no notation of such a prescription in his file. The Defendant contended that he should again be placed on some form of release because he needed to support his children and care for his father.

The trial court found the Defendant a less than credible witness and noted that the Defendant had "an excuse for everything." The record supports the trial court's decision to revoke the Defendant's community corrections sentence.

Upon revoking the Defendant's placement in the Community Corrections program, the trial court had to determine which sentencing alternative was appropriate for the Defendant. The trial court determined that the Defendant should be placed in confinement with the Tennessee Department of Correction. We find no abuse of discretion in this ruling. The Defendant had demonstrated his unwillingness to comply with the terms of a sentence involving release in the community, and he further demonstrated himself to be a less than credible witness to the court. The Defendant's conduct entitled the trial court to conclude that the Defendant's potential for rehabilitation was less than promising. Accordingly, we conclude that the trial court did not abuse its discretion in ordering the Defendant to serve the remainder of his sentence in confinement.

### **Conclusion**

Based upon our review of the record, we cannot conclude that the trial judge abused his discretion when he ordered that the balance of the Defendant's sentence be served in confinement. The judgment of the Dickson County Circuit Court is accordingly affirmed.

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DAVID H. WELLES, JUDGE